

VERN A. VENABLE

IBLA 72-220

Decided February 6, 1973

Appeal from a decision of the District Office, Folsom, California, Bureau of Land Management, denying application for renewal of a grazing lease.

Reversed and remanded.

Administrative Practice—Grazing Leases: Applications—Grazing Leases: Renewal—Rules of Practice: Evidence

Where the Bureau of Land Management rejects a grazing lease renewal application and no rational basis therefor is manifested in the record, the rejection will be reversed and the case remanded for further appropriate consideration.

APPEARANCES: Vern A. Venable, of San Jose, California, pro se.

OPINION BY MR. FISHMAN

Vern A. Venable has appealed to this Board from a decision, dated November 12, 1971, rendered by the Area Manager of the District Office, Folsom, California, Bureau of Land Management, denying his application for renewal of a grazing lease.

Appellant's application was made pursuant to section 15 of the Taylor Grazing Act of June 28, 1934, 48 Stat. 1275, as amended, 43 U.S.C. § 315m (1970). In denying appellant's application, the decision below stated that the land in issue was steep and covered with brush, and that most of the available forage was located in drainages. The decision also stated that in order to use the available forage appellant would have to construct stock trails which would damage the watershed, and that even after construction of the trails, appellant could not keep his livestock from drifting onto adjacent private lands because of the absence of fences.

While the reasons stated in the decision of the Bureau will often support the denial of an application, in the facts and circumstances presented in the case at bar, there is disclosed no

rational basis for the action taken by the Bureau in light of the past practice of the Bureau in issuing successive grazing leases to the appellant for the same land described in his current application. In the absence of more compelling reasons, we are of the opinion that the decision below must be reversed. Cf. United States v. Charles Maher, et al., 5 IBLA 209, 79 I.D. 109 (1972).

The land in issue, 640 acres, has been leased by appellant since 1951 and at least half of the land has been leased by appellant since 1941. In all of those years, appellant was permitted to hold his lease, notwithstanding the steepness of the land, the absence of fences, or the fact that most of the available forage is located in drainages.

There is nothing in the record to indicate appellant damaged the Federal range or abused his grazing privileges in the past. Thus, we perceive no reason to deny appellant's application for renewal. We note that appellant's application reflects that he owns only seven head of cattle and only requests grazing privileges from February to May. It is difficult to project the egregious results envisaged by the Area Manager's decision. ^{1/} In light of the history of use of the land by appellant, it defies rationality to find that seven cows will lay waste, plunder and wreak havoc to 640 acres of land from February to May.

^{1/} We note that there appears in the case file two memoranda prepared by separate employees of the Bureau. The subject matter of both memoranda relates to conversations the respective Bureau employees had with appellant in connection with the renewal of his grazing lease. Both memoranda are dated subsequent to the time appellant filed his appeal, and refer to accusations and statements reportedly made by appellant, none of which would enhance appellant's prospect for favorable action on appeal. While memoranda to a case file have a certain value, we are of the opinion that the memoranda in this case are out of place. If the appellate process is to maintain its vitality and integrity, an appellant ought to be afforded an opportunity to respond to statements reportedly made by him, at least insofar as such statements are germane to the issues in a case. If such statements are not germane, they should not appear in a case file.

We find that the reasons stated for denial of appellant's application are less than persuasive. First it is stated that there is "no way" for the appellant to move his livestock from his base land to the drainages (albeit the appellant has apparently done so for 30 years or more). The next "reason" stated is that to utilize the forage the appellant would have to construct stock trails (which means that there is "a way" for the appellant to move his livestock from his base land to the drainages). Of course, the next reason given is that construction of stock trails "would create a serious erosion hazard" (albeit appellant was issued a range improvement permit in 1959 to construct stock trails). A field report indicates appellant constructed the stock trails, 2/ but there is nothing in the record to suggest that his stock trails created any "serious erosion hazard." The next stated reason is that appellant's livestock would drift onto private lands 3/ (which would seem to indicate that livestock on such private lands could drift onto appellant's land).

We cannot agree with the statement made in the dissenting opinion that appellant does not allege the determinations of the Area Manager were erroneous. Appellant appeared pro se and is not well versed in the art of advocacy; however, he adequately challenged the Area Manager's reasons for denying his application for renewal. Appellant states that his "private lands, and lands requested in the lease * * * are separated from other ranches by natural, brushy ridges * * *." Appellant asserts that it was because of this separation that the lands were awarded to him rather than Stanley Stonier in 1961. Appellant also makes sufficient reference to the

2/ The field report also indicates that one of the appellant's stock trails is presently nonfunctional. Based upon the information in the record, it would seem that repair of this trail would be necessary to make use of at least part of the available forage.

3/ The private lands to which the decision refers are owned by Stanley Stonier. The case file shows that one of the Stoniers accompanied the Bureau employee, Donald H. Heinze, at the time Heinze inspected the Federal range land in issue before acting unfavorably on appellant's application for renewal. Appellant states that the last time he applied for a lease of the same lands in issue a conflict of lease applications had to be resolved, and was resolved, in appellant's favor. The other applicant for the land was Stanley Stonier.

shortcomings of the reasoning in the Area Manager's decision when he points out that the lease was granted to him several times in the past notwithstanding the several factors relied upon by the Bureau in denying his current application for renewal.

The dissenting opinion states:

The Area Manager is not required herein to explain why the lease was erroneously granted in the past, but only why the lease should not be renewed.

This reasoning postulates that appellant was erroneously granted grazing leases in the past. The decision of the Area Manager, however, neither states or infers that the lease was erroneously granted in the past.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case is remanded to the Bureau of Land Management for action not inconsistent with the views expressed herein.

Frederick Fishman, Member

I concur:

Anne Poindexter Lewis, Member

I dissent:

Joseph W. Goss, Member

DISSENTING OPINION BY MR. GOSS

I would affirm the decision of the Area Manager. The reasons given by the Area Manager for the denial of appellant's application for renewal of his grazing lease were:

1. The land is steep.
2. The land is covered with brush.
3. The forage is located in the drainages which are inaccessible to livestock.
4. To utilize the forage, stock trails would have to be constructed down extremely steep erodible slopes.
5. The construction of such stock trails would create a serious erosion hazard.
6. Livestock would drift onto private lands.
7. Investment for stock trails and fencing would far exceed the value of the forage.

The majority opinion recognizes that such factors may be the basis for the denial of an application. As to reasons 1, 2, 3, 4, 5 and 7, appellant does not allege, nor does he offer evidence to show that the Area Manager's determinations were erroneous. Rather, he relies on the arguments that (1) since a lease had been granted in the past, it should be granted now and (2) leases for similar surrounding areas had previously been allowed to others.

Departmental regulation 43 CFR 4121.2-1(a) requires the authorized officer to "determine the availability of public land for grazing leases and the amount of forage available for use by livestock in conjunction with considerations for watershed protection, wildlife and other multiple uses." The Area Manager in this case made a determination that protection of the watershed outweighed the value of the land for grazing.

In a 1952 report, the Field Examiner estimated the carrying capacity of the land at five animals per section per year. The record is unclear as to the extent to which the appellant has actually used the property for grazing in recent years.

The Area Manager is not required in this proceeding to explain why the lease was erroneously granted in the past, but only why the lease should not be renewed. Conditions in Santa Clara County have changed; indeed, the population growth since the lease was granted in 1941 has been remarkable. Under the circumstances, the uncontroverted findings made by the Manager would seem sufficient. If any error has been made in reviewing or granting other leases in the area, this is not a reason for improperly renewing an undeniably improvident lease.

Under the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 et seq. (1970), the national policy requires a new approach toward the prevention of damage to the environment. In section 102 (1) of the Act, 42 U.S.C. § 4332 (1) (1970), Congress authorized and directed that "to the fullest extent possible: (1) the policies, regulations and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter."

The land herein has been found to be covered with brush, which in itself has been a reason for denial. See Ernest Pavese, Jr., Executor of the Estate of Ernest L. Pavese, Sr., Deceased, Grs. Lse. Appln. 63213 (Folsom District, California), March 16, 1967. In view of the uncontroverted finding that to allow grazing and stock trails to be built on these lands would cause serious erosion problems, I feel the Area Manager was within his discretion in denying the application.

